IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.665 OF 2006

Mr.Sayyed Jameel Hussaini.. Petitioner

versus

Smt. Naseem Akhatar Hussaini ..Respondents

Mr.V.G.Peshave for Petitioner

CORAM : D.G.KARNIK, J

DATED : 27th February, 2006

P.C.

1. Heard learned counsel for the petitioner.

2. By this petition, the petitioner challenges the order passed by the appellate Court rejecting the application for appointment of Court Commissioner made in appeal.

3. The case of the petitioner is that the suit premises are situated in a slum area. According to the petitioner, he had adduced evidence by examining the concerned officer in-charge of slums of the Pune Municipal Corporation. Despite this, the trial Court has held that the suit premises are not situated in the slum area. In my view, the appellate Court is entitled to re-appreciate

the evidence and if satisfied, can hold that the premises are situate in a slum area. The Court Commissioner cannot be appointed at the appellate stage for the purpose of determining whether the suit premises are situated in a slum area.

4. All evidence ought to have been adduced by the petitioner before the trial Court and no grounds for adducing additional evidence in appeal are made out. I see no error in the order rejecting the application for appointment of Court Commissioner. Petition is rejected summarily.

(D.G.KARNIK, J)

rng.